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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10722/2016**

**ORIENTAL INSURANCE COMPANY
LIMITED**

..... Petitioner

Through: Ms Shreya Tyagi, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Rakesh Kumar, CGSC for R-
1/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.07.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 17.10.2016 (hereafter 'the impugned order') passed by the National Commission for Scheduled Castes (hereafter 'the Commission') holding the petitioner liable to pay an amount of ₹26,20,727/- to Ms. Laxmi Kishore (respondent no.3). The Commission has further held that the liability of the petitioner with respect to electricity bill is restricted to ₹63,456/-.

2. The aforesaid order was passed by the Commission pursuant to a complaint filed by respondent no.3 and one Sh Vijay Kishore , *inter alia*,

stating that they belong to the category of Scheduled Caste and further alleging that the petitioner had not paid the amount due to the petitioner in respect of the premises leased by respondent no.3 to the petitioner. They also alleged that the officers of the petitioner had used abusive language and harassed respondent no.3 mentally and financially.

3. The disputes between the parties, essentially, relate to the lease of certain premises granted by respondent no.3 to the petitioner. In terms of the said Lease Deed dated 01.02.2005, the petitioner had taken the second floor of the property located at Kadru Diversion Road, Tripathi Colony, Doranda, Ranchi (hereafter 'the property'), on a lease for a period of nine years.

4. Apparently, certain disputes have arisen between the petitioner and respondent no.3 in relation to the said lease. Respondent no.3 claims that certain amounts are recoverable from the petitioner, which is disputed by the petitioner. This Court is not called upon to examine merits of the said disputes. The limited controversy that falls for consideration of this court is whether such disputes could have been entertained by the Commission.

5. The Commission has been constituted in terms of Article 338 of the Constitution of India, which provides for constitution of the Commission for Scheduled Castes. Clause (5) of Article 338 of the Constitution of India specifies the duties of the Commission. Clause 8 of Article 338 provides that while investigating any matter referred to in sub-Clauses (a) or (b) of Clause 5, the Commission shall have all the powers of a Civil Court trying a suit. Clauses 5 to 8 of Article 338 of the Constitution of India are set out below:

“(5) It shall be the duty of the Commission—

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes ^{3***} under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes ^{1***};

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes ^{1***} and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes ^{1***}; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes ^{1***} as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the

recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.”

6. A plain reading of sub-clause (b) of Clause (5) of Article 338 of the

Constitution of India indicates that the functions of the Commission include inquiring into specific complaints “with respect to deprivation of rights and safeguards of Scheduled Castes”. However, the Commission has no power or mandate to pass specific directions or adjudicate disputes between parties. Its role is, essentially, recommendatory. In terms of clause (8) of Article 338, the Commission has been conferred powers of a civil court in respect of the specified matters while investigating or inquiring into matters referred to in sub-clause (a) and (b) of clause (5) of Article 338 of the constitution of India. But clause (8) does not empower the Commission to either adjudicate disputes or issue any injunctions or pass any decree.

7. In *All India Indian Overseas Bank SC and ST Employees’ Welfare Association and Ors.*(1996) 6 SCC 606, the Supreme Court had observed as under:-

“10. Interestingly, here, in clause (8) of Article 138, the words used are “the Commission shall ... have all the powers of the Civil Court trying a suit.” But the words “all the powers of a Civil Court” have to be exercised “while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5”. All the procedural powers of a Civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.”

8. This Court has, in a number of decisions, held that the Commission

cannot act as a court of law to adjudicate the disputes between the parties. In the present case, the disputes are, essentially, in the nature of commercial disputes, which are wholly outside the scope of jurisdiction of the Commission.

9. This Court in ***Union of India v. National Commission for Scheduled Castes and Anr.: W.P.(C) 2390/2012, decided on 28.05.2014***, had observed as under:-

“17. This Court is of the view that the reports of the Commission are recommendatory in nature and cannot be equated with decrees/orders passed by Civil Courts which are binding on the parties and can be enforced and executed. Commission's reports are not alternative to the hierarchical judicial system envisaged under the Constitution of India. As this Court is of the view that Commission has no jurisdiction, the doctrine of estoppel offers no assistance to the respondent.”

10. In ***National Seed Corporation Ltd. v. National Commission for SC & ST and Anr.: W.P.(C) 5845/2000, decided on 30.05.2013***, this Court had considered the case wherein the Commission had called upon the National Seed Corporation Limited to reinstate one of the employees in service and to further conduct an enquiry as to the circumstances in which he had been discharged. The Court after examining the limited scope of jurisdiction of the Commission, concluded as under:-

“51. The National Commission for Schedule Caste and Schedule Tribe clearly did not have the power to issue a mandate to the Petitioners to either re-instate the Respondent No. 2 back into service or to conduct an enquiry into the

circumstances under which the Respondent No. 2 was discharged from the services of the Petitioner by alleged misuse of provisions of Voluntary Retirement Scheme, which clearly was beyond the Constitutional scheme of the powers conferred on the said Commission by Article 338 of the Constitution of India.”

11. A bare perusal of the complaint filed by respondent no.3 also indicates that the matter in controversy relates to a commercial dispute. Although, respondent no.3 has alleged that the officers of the petitioner had threatened and used abusive language, the substance of the complaint are the monetary claims made by respondent no.3 and Sh Vijay Kishore against the petitioner. This Court is of the view that the allegations of abusive language and demeaning terms are bald allegations, which have been made only with the view to somehow invoke the jurisdiction of the Commission. It is also noteworthy that the thrust of the impugned order passed by the Commission is also the adjudication of the monetary claims made in the complaint filed before the Commission.

12. It is seen that the Commission proceeded to not only adjudicate the disputes but is also insisting on its enforcement. This is evident from the letter dated 07.11.2016, whereby the Commission has called upon the petitioner to furnish the action taken report.

13. In view of the above, the petition is allowed and the impugned order is set aside. This does not preclude respondent no.3 from instituting any proceedings as may be advised, for recovering of any amount which is claimed due with the petitioner in accordance with law.

14. Needless to state that all rights and contentions of the parties are left open.

VIBHU BAKHRU, J

JULY 26, 2018
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